

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1982 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RASIKLAL V JHAVERI

Versus

STATE OF GUJARAT

Appearance:

MR ARUN H MEHTA for Petitioner

MR VB GHARANIA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, a retired teacher was compelled to approach this Court for seeking relief or direction to the respondents to pay him the pension and other retirementary benefits for which he is legally entitled. Though the petitioner has served the educational institution in the State of Gujarat which received

grant-in-aid, the pension was not given to him on the ground that there were break in service. The petitioner has to his credit, about 30 years' service as a teacher/principal but his fate was to go without any pensionary benefits. The reply has not been filed by the respondents though this petition has been filed in the year 1986. There is no dispute that there was only one break in the service of the petitioner during his first 15 years' service and that break has also been condoned. The facts are not required to be dealt with in detail as the point which has arisen in this case for consideration is squarely covered in favour of the petitioner vide judgment of this Court rendered in L.P.A. No.20 of 1982 decided on 26.11.82. The question before the Court in that case was whether the appellant therein has earned the right to pension under the pension scheme for the Teaching and Non Teaching staff in Non Government secondary schools termed by the Education and Labour Department of the Government of Gujarat as per Resolution dated 21st December 1971 or not. Here is the case of a teacher of a Non Government school. The expression "qualifying service" is defined in clause 5 of the scheme and it provides that no Government servant can claim benefits to this pension scheme if his actual qualifying service at the time he quits the Government service is less than 10 years. So the petitioner has to establish that he acquired right to pension by putting in actual qualifying service of not less than 10 years. The petitioner has completed 30 years' service, but there were breaks. Para 7 of the scheme is indicated below:

"In counting the length of qualifying service for pension under scheme all previous service, whether temporary efficiating or permanent either in one or more than one non-Govt. secondary school, shall be taken into account."

3. This Court has considered in above case that the conditions embodied in the proviso contain certain riders. We are concerned with only one rider in this case, namely, whether there have been more than six breaks within the meaning of proviso so that the interruptions would entail forfeiture of the past service. Two types of breaks are there, non physical and physical and this Court has held in the aforesaid case as dispute was also not there, that non physical breaks are not to be treated as breaks. The petitioner has uninterrupted more than 10 years' service in the present case. There was only one break within 15 years of service and that has also been condoned. This position is not controverted by the learned counsel for the

respondent. So it is not case where the petitioner has no qualifying service. He has completed qualifying service and as such he was entitled for fixation of his pay for pension and other retirementary benefits but the respondents have denied him those benefits without there being any justification. So the petitioner had put in qualifying service, i.e. the service for 10 years as contemplated by the scheme and as such he has earned the right to pension and it cannot be taken away unless there is some statutory provision in this behalf. So by interruption in subsequent period, may be more than six breaks, the qualifying services which the petitioner has already acquired are not forfeited.

4. In the result, this Special Civil Application succeeds and the same is allowed and the respondents are directed to fix the pension and other retirementary benefits which are payable to the petitioner within a period of three months from the date of receipt of certified copy of this order. The petitioner shall be paid the amount of arrears of pension and other retirementary benefits within a period of two months next. The petitioner, a teacher, has been denied pension without there being any justification whatsoever. Not only this, but it is a case where the respondents have not taken care to follow above cited decision of this Court rendered way back in the year 1982. This Court has laid down that the qualifying services of 10 years' which have been acquired by the petitioner will not be forfeited merely because in subsequent period, there were breaks in service. A retired person has been harassed without there being any justification whatsoever. Taking into consideration the totality of the facts of the case, it is hereby ordered that the petitioner shall be entitled for interest on the arrears of pension and other retirementary benefits at the rate of 18% p.a. from the date of filing this Special Civil Application, i.e. 7.4.86 (to round up the figure, from 1.4.86). The amount of interest on pension and other retirementary benefits payable to the petitioner shall also be determined and paid to the petitioner within a period of two months thereafter. It is also a case where exemplary costs has to be granted to the petitioner. However, the learned counsel for the petitioner submits that he has no objection in case this amount of costs is ordered to be deposited in the Bar Council of Gujarat, Ahmedabad, in the Advocates' Relief Fund. Order accordingly. The respondents are directed to deposit Rs.2,000/- by way of costs of this petition in the office of the Bar Council of Gujarat at Ahmedabad under the head, "Advocates' Welfare Fund", within a period of three months from the

date of receipt of certified copy of this order. They are further directed to produce before this Court, receipt of deposit of the aforesaid amount. A copy of this order may be sent to the Secretary, Bar Council of Gujarat, Ahmedabad, and in case this order is not complied by the petitioners, it shall be open to the Secretary, Bar Council of Gujarat, Ahmedabad, to take appropriate action provided. Rule made absolute accordingly.

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(sunil)